

118  
11/29/01

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON E. BENSON, : CIVIL ACTION  
 : NO. 1:CV-00-1229  
Plaintiff, :  
 : (Judge Caldwell)  
vs. : (Magistrate Judge Blewitt)  
 :  
WILLIAM G. ELLIEN, M.D., et al., :  
 :  
Defendants :

FILED  
SCRANTON  
NOV 29 2001  
PER \_\_\_\_\_  
DEPUTY CLERK

DEFENDANT'S, WILLIAM G. ELLIEN, M.D.,  
MOTION FOR EXTENSION OF TIME TO FILE DISPOSITIVE MOTIONS

Moving defendant, William G. Ellien, M.D. ("Ellien"), by and through his counsel, Gold, Butkovitz & Robins, P.C., hereby moves before this Honorable Court for an extension of time to file a dispositive motion in regard to the above-captioned matter, and in support thereof, states as follows:

1. The above-captioned matter, presently pending before this Court, involves Plaintiff's claims against various defendants, including moving defendant, Ellien, asserting federal and state law claims arising from the alleged failures to properly treat Plaintiff's epilepsy and psychiatric conditions.
2. Moving defendant intends to file a Motion for Summary Judgment, which moving defendant believes will severely limit and/or eliminate some or all of Plaintiff's claims regarding treatment by moving defendant.
3. As a psychiatrist, moving defendant provided Plaintiff with treatment for his severe psychiatric conditions, including the use of therapy as well as pharmacological treatment for Plaintiff's psychiatric conditions.

4. Moving defendant respectfully requests additional time within which he may file his Motion for Summary Judgment.

5. As of this date, this Court has not yet scheduled this matter for trial, for a pre-trial conference, or for the submission of any pre-trial materials. As of this date, Plaintiff continues to make discovery requests, and seek further discovery, principally from the commonwealth/department of corrections defendants.

6. In addition, it is believed that all defendants will be filing motions for summary judgment in this matter to limit or eliminate entirely Plaintiff's claims in this matter.

7. In the case of moving defendant, the motion for summary judgment will be substantial, and will have a high likelihood of success. Plaintiff's claims against moving defendant depend entirely upon his demonstrating that the treatment provided by Dr. Ellien fell beneath the psychiatric standard of care. Plaintiff does not dispute that Dr. Ellien treated him and provided therapy and medication for his psychiatric conditions. Plaintiff has, as far as he has revealed in the discovery of this matter, has failed to retain or identify any expert witness who will testify as to the applicable standard of care, or as to Dr. Ellien's performance thereunder. Absent expert testimony, Plaintiff will be unable as a matter of law to prevail in any claim against Dr. Ellien. The likelihood is high that Plaintiff's claims against Dr. Ellien will succumb to a dispositive motion.

8. The resolution either partially or fully via summary judgment of Plaintiff's claims against Dr. Ellien will materially advance the resolution of this matter as a whole, and shorten or eliminate the need for a trial.

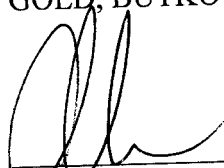
9. It is in the interest of justice and fairness that Dr. Ellien be accorded a reasonable extension of time to prepare and file his motion for summary judgment in this matter.

**WHEREFORE**, and for the reasons discussed herein, moving defendant, William G. Ellien, M.D., respectfully requests that this Honorable Court grant his request, and enter the accompanying order permitting him to file his motion for summary judgment no later than December 31, 2001.

Respectfully submitted,

GOLD, BUTKOVITZ & ROBINS, P.C.

BY:

A handwritten signature in black ink, appearing to be 'A. S. Gold', written over a horizontal line.

ALAN S. GOLD  
SEAN ROBINS  
Attorneys for defendant,  
William G. Ellien, M.D.

7837 Old York Road  
Elkins Park, PA 19027  
(215) 635-2000

DATE: November 21, 2001